

M77WterC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 343 (JMF)

5 BOSS TERRELL,

6 Defendant.

Conference

7 -----x  
8 New York, N.Y.  
9 July 7, 2022  
4:30 p.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the  
Southern District of New York

16 BY: THOMAS JOHN WRIGHT

Assistant United States Attorney

17 BRUCE D. KOFFSKY

18 Attorney for Defendant

M77WterC

(Case called)

MR. WRIGHT: Good afternoon, your Honor. For the government, Assistant United States Attorney Thomas John Wright.

THE COURT: Good afternoon, Mr. Wright.

MR. KOFFSKY: Good afternoon, your Honor. Attorney Bruce Koffsky. I'm here with Mr. Boss Terrell. Mr. Ricco was supposed to be here, but his dance card was full, and he begs the Court's leave to allow him not to be here today.

THE COURT: All right. I think you're more than able to handle it, so that's fine. Obviously, by order earlier this week, I think I appointed Mr. Ricco as learned counsel given the nature of the charges in this case.

All right. We're here for an initial conference.

My understanding, Mr. Wright, is that Mr. Terrell was arraigned before the magistrate judge and that the magistrate judge took care of the Rule 5(f) oral and written order. Is that correct?

MR. WRIGHT: That's my understanding, your Honor.

THE COURT: All right.

Do you want to tell me a little bit just by way of background? I've reviewed the indictment, but beyond what I would have learned from that review, if you can tell me anything by way of background and then let me know what the nature and status of discovery is, that would be helpful.

M77WterC

1 MR. WRIGHT: Certainly, your Honor.

2 Your Honor, the indictment, as your Honor's aware,  
3 charges, in the first count, a racketeering conspiracy whose  
4 duration is alleged to have run from in or about 2015 through  
5 the present. So there's a substantial period of time in which  
6 the defendant is alleged to have been an active member of the  
7 conspiracy.

8 I've spoken, your Honor, with both Mr. Koffsky and  
9 also Mr. Ricco separately following his appointment. The  
10 discovery in the case principally consists of video recordings  
11 largely from surveillance cameras tied to multiple incidents,  
12 including both the murder and attempted murder that are alleged  
13 in Counts Two and Four of the indictment.

14 In addition, your Honor, there are records relating to  
15 different businesses that had been the focus of different  
16 robberies during the case as well as a substantial volume of  
17 search warrants on cellular devices that had been seized  
18 previously from the defendant as well as other alleged members  
19 of the conspiracy.

20 I've spoken, as I said, your Honor, with Mr. Ricco and  
21 Mr. Koffsky, and I think that if, as an initial matter --  
22 Mr. Koffsky, I know, is going to provide the government with  
23 three external drives of a size that I think should be able to  
24 accommodate the initial provision of discovery. I anticipate  
25 that we'll have that discovery back to Mr. Koffsky and

M77WterC

1 Mr. Ricco by the end of this month, approximately three weeks,  
2 to Friday, July 29. And we'll obviously be in very active  
3 communication with them concerning their client's ability to  
4 access certain parts of that discovery at the MDC.

5 THE COURT: OK. Just to, I guess, elaborate a little  
6 on a couple of those things, I would obviously like --

7 I assume that's Mr. Terrell's family member here.

8 MR. KOFFSKY: Excuse me, your Honor.

9 THE COURT: All right.

10 MR. KOFFSKY: Thank you, your Honor.

11 THE COURT: All right. Sorry. I obviously would very  
12 much like to --

13 THE DEFENDANT: I'm sorry, your Honor.

14 THE COURT: -- enable them to be here, but I also need  
15 to make sure everybody can hear.

16 THE DEFENDANT: I'm sorry, your Honor. It's OK. I  
17 understand.

18 THE COURT: Zero apologies necessary. And if the  
19 child calms down and is quiet, they're more than welcome to  
20 come back in. I just need to make sure we can all hear one  
21 another.

22 THE DEFENDANT: Yes. I understand, your Honor.

23 THE COURT: Thank you.

24 Mr. Wright, I think you mentioned searches or seizures  
25 of various electronic devices and contents thereof. Can you

M77WterC

1 tell me the basis for those searches and how many devices we're  
2 talking about?

3 MR. WRIGHT: Your Honor, there are approximately a  
4 dozen devices that have been seized at different times and  
5 searched pursuant to previously issued warrants, and the  
6 results of those seizures include the data that was extracted,  
7 in certain cases successfully, from the devices.

8 THE COURT: And how many allegedly belonging to this  
9 defendant as opposed to others?

10 MR. WRIGHT: I believe approximately three, your  
11 Honor.

12 THE COURT: Three belonging to this defendant.

13 MR. WRIGHT: Correct, your Honor.

14 THE COURT: All right.

15 And did he make any postarrest statements?

16 MR. WRIGHT: None, your Honor, that I think are  
17 material at this stage of the case and with respect to the  
18 discovery and disclosure obligations.

19 THE COURT: All right. Well, I would urge you to err  
20 on the side of caution and disclose any statements that he made  
21 when in custody or following arrest, whether you deem them to  
22 be material or not.

23 MR. WRIGHT: Certainly, your Honor.

24 And I was only speaking with that caveat; I believe he  
25 did provide pedigree information for himself, your Honor, with

M77WterC

1 respect to his residence and contact information. Aside from  
2 that, I'm not aware of any other postarrest statements.

3 THE COURT: All right.

4 And I don't think you said anything about wiretaps,  
5 but any wiretaps?

6 MR. WRIGHT: No, your Honor.

7 THE COURT: All right.

8 And do you anticipate, to the extent that you can say  
9 anything in this setting, any superseding indictments, either  
10 to add additional charges or add additional defendants?

11 MR. WRIGHT: Your Honor, I do anticipate that there  
12 likely will be a superseding instrument. I'm not yet certain  
13 of its nature.

14 THE COURT: Do we know any sense of timing on that, or  
15 too hard to say?

16 MR. WRIGHT: Your Honor, I'm not certain, and  
17 obviously, in the utmost good faith to the Court as well as to  
18 the defendant and his counsel, I speak cautiously only because  
19 I'm really not certain as to the timing. But I anticipate it  
20 will be within the next three months.

21 THE COURT: All right.

22 And you said you could make discovery of what you have  
23 in your possession within three weeks, is that right?

24 MR. WRIGHT: Yes, your Honor.

25 THE COURT: And finally, to the extent that there are

M77WterC

1 victims or family members of victims who would be entitled to  
2 notice under the CVRA, or any other statute for that matter,  
3 has the government made the appropriate notifications? Do you  
4 have a system in place to do so?

5 MR. WRIGHT: Yes, your Honor.

6 THE COURT: All right. Very good.

7 And one last question. What is the status, to the  
8 extent that these are capital-eligible crimes, what's the  
9 status of that process?

10 MR. WRIGHT: Your Honor, that process is ongoing. It  
11 has begun, and it is ongoing.

12 THE COURT: And do you, sitting here today, have any  
13 guess of how long it would take, either based on how long these  
14 things are taking these days or anything specific to this case?

15 MR. WRIGHT: Your Honor, I don't believe that there's  
16 anything specific to this case that will impact the timetable,  
17 and that timetable has varied so substantially during the past  
18 two and a half years that I'm really not certain of when it  
19 will have completed.

20 THE COURT: All right. Well, I definitely would like  
21 to make sure that it is completed expeditiously. I did have  
22 one case that only came to trial this year, and part of the  
23 reason that it was so extensively delayed was that that process  
24 took close to two years, which was very much to my frustration.  
25 So I will want to avoid that here.

M77WterC

1 All right. I'll direct the government to produce  
2 discovery, whatever is in its possession, recognizing that the  
3 obligation to produce discovery is a continuing one and,  
4 therefore, would apply to anything that comes into its  
5 possession after, by July 29. That's three weeks from  
6 tomorrow. And anything that the government obtains thereafter  
7 should promptly be disclosed in accordance with its continuing  
8 obligations.

9 Mr. Koffsky, my usual practice, as I think you know,  
10 is to set a pretrial motion deadline, but in some cases of this  
11 nature, counsel request to put that off pending a decision on  
12 the question of whether to seek the death penalty or not.

13 What's your view on that?

14 MR. KOFFSKY: Excuse me one second, your Honor. It's  
15 my first day with hearing aids. I apologize.

16 THE COURT: No worries. I hope they're working.

17 MR. KOFFSKY: Your Honor, I'm going to request that  
18 the Court not set a motions timetable. It's my belief that we  
19 will be successful on the capital-eligible side, and I  
20 certainly hope that it happens during this administration.

21 As the Court may know, not a single authorized case  
22 has come out of this administration, and in fact, there have  
23 been more than a dozen deauthorized cases that are coming out  
24 of this administration.

25 So Mr. Ricco and I are going to get on our mitigation



M77WterC

1 case and do as much as we can and assist the government in  
2 whatever submission they make to Washington. But before -- so  
3 I'm going to ask that the Court hold off on setting a motions  
4 schedule until we get word from Washington that this is going  
5 to be a deauthorized case or that there's no authorization in  
6 this case, and we can go forward as if it's any other,  
7 run-of-the-mill Southern District indictment.

8 THE COURT: OK. I certainly hope it's in this  
9 administration, not because I have any interest in the outcome  
10 but because if it's not this administration, that means it's  
11 taken very, very long.

12 In any event, that's fine with me, and I will defer  
13 setting the motion deadline for now.

14 Anyone have a thought on how far out we should  
15 schedule the next conference to see where things stand,  
16 recognizing that if all you're going to tell me at that  
17 conference is that you're still waiting, we can adjourn it by  
18 letter as well?

19 Mr. Wright.

20 MR. WRIGHT: Your Honor, if I could take one minute  
21 with Mr. Koffsky?

22 THE COURT: Yes.

23 MR. WRIGHT: Thank you.

24 THE COURT: Mr. Koffsky, strictly speaking, you do  
25 have to wear your mask.

M77WterC

1 MR. KOFFSKY: Thank you, your Honor.

2 THE COURT: Thank you.

3 MR. WRIGHT: Your Honor, Mr. Koffsky proposes 90 days,  
4 and the government's in agreement that that's a reasonable time  
5 frame, I think, to have a material update for the Court on one  
6 or another point, and so we'd propose that with him.

7 THE COURT: All right. Why don't I have you back,  
8 let's say, October 6 at 2:30 in the afternoon.

9 Does that work?

10 MR. WRIGHT: It does for the government. Thank you,  
11 your Honor.

12 THE COURT: Mr. Koffsky.

13 Could you just use the microphone, Mr. Koffsky. I  
14 don't know where it is.

15 MR. KOFFSKY: Certainly, your Honor.

16 THE COURT: All right. October 6 at 2:30.

17 MR. KOFFSKY: That's great. Thank you, your Honor.

18 THE COURT: All right. And as I more or less just  
19 said, if you're still waiting, you're welcome, if everyone  
20 agrees, to put in a letter requesting an adjournment and tell  
21 me where things stand and how long you expect it to take,  
22 recognizing that I will want to ensure that things move along  
23 expeditiously if I can do anything about it. Bottom line is if  
24 you're just going to tell me that there's nothing to tell me,  
25 you can tell me that by letter. But otherwise, I will plan to

M77WterC

1 see you on October 6.

2 Is there an application on the Speedy Trial Act,  
3 Mr. Wright?

4 MR. WRIGHT: Yes, your Honor.

5 The government does respectfully request that the  
6 Court exclude time for speedy trial purposes from today through  
7 October 6, 2022, on the basis that the interests of the public  
8 and the defendant, Mr. Terrell, in a speedy trial are  
9 outweighed here by his interest in both beginning to receive  
10 and review discovery with his counsel and learned counsel as  
11 well as preparing any mitigation submissions, as counsel  
12 referenced, in connection with the authorization of any  
13 potential sentence in this case.

14 THE COURT: Any objection, Mr. Koffsky?

15 MR. KOFFSKY: No objection, your Honor.

16 THE COURT: All right.

17 I will exclude time under the Speedy Trial Act between  
18 today and October 6, 2022. I find that the ends of justice  
19 served by excluding that time outweigh the interests of the  
20 public and the defendant in a speedy trial, to ensure that the  
21 defendant and counsel have an opportunity to begin reviewing  
22 discovery with an eye toward any motions that may be filed; to  
23 give counsel and the defendant an opportunity to prepare the  
24 mitigation application with respect to the question of  
25 punishment, and really for those purposes.

M77WterC

1           Mr. Koffsky, I would urge you, obviously, to take  
2           advantage of the time between now and October 6 to begin  
3           reviewing discovery so that when it is time to set a motion  
4           deadline, you're in a better position to prepare any motions  
5           and/or tell me if you have any motions to file. I'm not going  
6           to set the deadline today, but I certainly would hope you'll  
7           use the next few months to review things with an eye toward  
8           telling me what your motion situation is.

9           MR. KOFFSKY: Certainly, your Honor.

10          Mr. Ricco and I have made plans to talk to Alan Nelson  
11          at the Second Circuit for budgeting of people who will assist  
12          us on that and with an eye towards whatever motions we'll file  
13          once the capital decision has been made by Washington. We'll  
14          be prepared to file expeditiously, your Honor.

15          THE COURT: Great.

16          And to the extent that you need approval, any  
17          budgeting-type approval, you know presumably how to get that  
18          from me, if you need anything from me.

19          Mr. Wright made reference to ensuring that Mr. Terrell  
20          has access to the discovery. I haven't actually heard -- for  
21          all the problems I've heard about the MDC in the last year or  
22          two, that's not one that I've heard a whole lot recently, which  
23          is welcome news. Maybe that means that things are better on  
24          that front, but in any event, I certainly want to make sure  
25          that Mr. Terrell has an opportunity to review the discovery as

M77WterC

1 well.

2 So Mr. Wright, I would ask that you take steps to  
3 ensure that and, obviously, speak with counsel to ensure it as  
4 well.

5 Anything else?

6 From the government.

7 MR. WRIGHT: Nothing further, your Honor.

8 THE COURT: Mr. Koffsky.

9 MR. KOFFSKY: Nothing. Thank you, your Honor.

10 THE COURT: All right. In that case, we are  
11 adjourned. Have a wonderful afternoon and evening.

12 Thank you.

13 (Adjourned)